

Application No. 10/638,670

REMARKS

Claims 1-15 are pending. By this Amendment, claims 1, 3, and 13 are amended.

Claims 1 and 13 are amended to recite one of the limitations of claim 3 and claim 3 is amended to delete the limitation added to claims 1 and 13. No new matter has been added by the amendments to the pending claims. In view thereof, Applicant respectfully requests reconsideration and withdrawal of all rejections to the pending claims.

35 U.S.C. § 103

Claims 1-11, 13, and 15 are rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent 5,577,465 ("Cook") in view of U.S. Patent 5,743,412 ("Noble"). Applicant respectfully traverses this rejection. However, in order to advance the prosecution of this application, claims 1 and 13 are amended as stated above. In respectful contrast to the assertion regarding claim 3, Cook (nor Noble) discloses a nonterminal aperture. Cook, in fact has an end (i.e. terminal) opening 18, which receives a prong 24.¹ Because neither Cook nor Noble disclose nor suggest the foregoing limitation, a prima facie case of obviousness has not been established with respect to claims 1, 10, and 13. The other rejected claims depend from one of claims 1, 10, or 13. Therefore, a prima facie case of obviousness has not been established with respect to the other rejected claims as well. Applicant further submits that a motivation to modify the disclosure of Cook with the disclosure of Noble has not been established. The required motivation must be present in the documents cited against the claim, generally present in the art at the time of the invention, or due to the nature of the problem being solved. None of these sources has been asserted as containing the required motivation. Moreover, if the latter two sources of motivation are asserted, the Examiner is respectfully required to execute an affidavit or declaration so that

¹ See Cook, column 2, line 51 *et seq.* ("The end openings 18 are typically round, but other shapes can also be used....Each corner member 14 has a center 22 and a plurality of prongs 24 directed outwardly from the center 22. Each prang 24 is sized and dimensioned to press fit into an end opening 18 in at least one of the beams 12.").

Application No. 10/58,670

Applicant can subsequently explain or contradict the assertions therewithin. Because a prima facie case of obviousness has not been established against the rejected claims, reconsideration and withdrawal of the rejection is respectfully requested.

Claims 12 and 14 are rejected under 35 U.S.C. § 103(a) as unpatentable over Cook in view of U.S. Patent 5,709,164 ("Batterton"). Applicant respectfully traverses this rejection. However, claims 1 and 13 are amended as described above. In addition to Cook and Noble, Batterton also fails to disclose or suggest the limitations in claims 1, 10, and 13 as described above. Therefore, claims 12 and 14, depending from respective claims 10 and 13, are not obvious as well because a prima facie case has not been established as shown above. Because a prima facie case of obviousness has not been established, reconsideration and withdrawal of the rejection is respectfully requested.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



Michael A. Bondi
Registration No. 39,616

Customer No. 24113
Patterson, Thuente, Skaar & Christensen, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402-2100
Telephone: (612) 349-5771